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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Gary Scherer,
Plaintiff,

v.

**City of Los Angeles; Los Angeles
World Airports; Pacific Coast
Sightseeing Tours and Charters,
Inc. and Does 1-10, Inclusive,**
Defendants.

Case No.: 2:17-cv-01110-FMO (KSx)
DISCOVERY MATTER
~~[Proposed]~~ Protective Order

1 By agreement of the parties hereto, pursuant to the Joint Stipulation
2 filed concurrently herewith, and for good cause shown, it is hereby
3 ORDERED:
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6 1. A. PURPOSES AND LIMITATIONS

7 Discovery in this action is likely to involve production of confidential,
8 proprietary, or private information for which special protection from public
9 disclosure and from use for any purpose other than prosecuting this litigation
10 may be warranted. Accordingly, the parties hereby stipulate to and petition
11 the Court to enter the following Stipulated Protective Order. The parties
12 acknowledge that this Order does not confer blanket protections on all
13 disclosures or responses to discovery and that the protection it affords from
14 public disclosure and use extends only to the limited information or items
15 that are entitled to confidential treatment under the applicable legal
16 principles. The parties further acknowledge, as set forth in Section 12.3,
17 below, that this Stipulated Protective Order does not entitle them to file
18 confidential information under seal; Civil Local Rule 79-5 sets forth the
19 procedures that must be followed and the standards that will be applied
20 when a party seeks permission from the court to file material under seal.
21

22 B. GOOD CAUSE STATEMENT

23 This action is likely to involve information: (1) regarding or relating
24 to the medical condition or ability of Plaintiff Gary Scherer; and (2)
25 regarding or relating to the contents of Defendants' employee personnel
26 files. Special protection from public disclosure and from use for any
27 purpose other than prosecution of this action is warranted. Such confidential
28 materials and information consist of, among other things, medical records,

1 summaries and information; disciplinary records, summaries and
2 information; and information otherwise generally unavailable to the public,
3 or which may be privileged or otherwise protected from disclosure under
4 state or federal statutes, court rules, case decisions, or common law.
5 Accordingly, to expedite the flow of information, to facilitate the prompt
6 resolution of disputes over confidentiality of discovery materials, to
7 adequately protect information the parties are entitled to keep confidential,
8 to ensure that the parties are permitted reasonable necessary uses of such
9 material in preparation for and in the conduct of trial, to address their
10 handling at the end of the litigation, and serve the ends of justice, a
11 protective order for such information is justified in this matter. It is the intent
12 of the parties that information will not be designated as confidential for
13 tactical reasons and that nothing be so designated without a good faith belief
14 that it has been maintained in a confidential, non-public manner, and there is
15 good cause why it should not be part of the public record of this case.

16 17 18 2. DEFINITIONS

19 2.1 Action: the federal lawsuit filed by Plaintiff Gary Scherer
20 against Defendants City of Los Angeles, Los Angeles World Airports,
21 Pacific Coast Sightseeing Tours and Charters, Inc.; on February 10, 2017 in
22 the Central District of California and reflecting case number 2:17-cv-01110-
23 FMO (KSx).

24 2.2 Challenging Party: a Party or Non-Party that challenges the
25 designation of information or items under this Order.

26 2.3 “CONFIDENTIAL” Information or Items: information
27 (regardless of how it is generated, stored or maintained) or tangible things
28

1 that qualify for protection under Federal Rule of Civil Procedure 26(c), and
2 as specified above in the Good Cause Statement.

3 2.4 Counsel: Outside Counsel of Record and House Counsel (as
4 well as their support staff).

5 2.5 Designating Party: a Party or Non-Party that designates
6 information or items that it produces in disclosures or in responses to
7 discovery as “CONFIDENTIAL.”

8 2.6 Disclosure or Discovery Material: all items or information,
9 regardless of the medium or manner in which it is generated, stored, or
10 maintained (including, among other things, testimony, transcripts, and
11 tangible things), that are produced or generated in disclosures or responses
12 to discovery in this matter.

13 2.7 Expert: a person with specialized knowledge or experience in a
14 matter pertinent to the litigation who has been retained by a Party or its
15 counsel to serve as an expert witness or as a consultant in this Action.

16 2.8 House Counsel: attorneys who are employees of a party to this
17 Action. House Counsel does not include Outside Counsel of Record or any
18 other outside counsel.

19 2.9 Non-Party: any natural person, partnership, corporation,
20 association, or other legal entity not named as a Party to this action.

21 2.10 Outside Counsel of Record: attorneys who are not employees of
22 a party to this Action but are retained to represent or advise a party to this
23 Action and have appeared in this Action on behalf of that party or are
24 affiliated with a law firm which has appeared on behalf of that party, and
25 includes support staff.

26 2.11 Party: any party to this Action, including all of its officers,
27 directors, employees, consultants, retained experts, and Outside Counsel of
28 Record (and their support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure
2 or Discovery Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing
5 exhibits or demonstrations, and organizing, storing, or retrieving data in any
6 form or medium) and their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL.”

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery
10 Material from a Producing Party.

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13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only
15 Protected Material (as defined above), but also (1) any information copied or
16 extracted from Protected Material; (2) all copies, excerpts, summaries, or
17 compilations of Protected Material; and (3) any testimony, conversations, or
18 presentations by Parties or their Counsel that might reveal Protected
19 Material.

20 Any use of Protected Material at trial shall be governed by the orders
21 of the trial judge. This Order does not govern the use of Protected Material
22 at trial.

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25 4. DURATION

26 Once a case proceeds to trial, all of the information that was
27 designated as confidential or maintained pursuant to this protective order
28 becomes public and will be presumptively available to all members of the

1 public, including the press, unless compelling reasons supported by specific
2 factual findings to proceed otherwise are made to the trial judge in advance
3 of the trial. See Kamakana v. City and County of Honolulu, 447 F.3d 1172,
4 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing
5 documents produced in discovery from “compelling reasons” standard when
6 merits-related documents are part of court record). Accordingly, the terms of
7 this protective order do not extend beyond the commencement of the trial.
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10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for
12 Protection. Each Party or Non-Party that designates information or items for
13 protection under this Order must take care to limit any such designation to
14 specific material that qualifies under the appropriate standards. The
15 Designating Party must designate for protection only those parts of material,
16 documents, items, or oral or written communications that qualify so that
17 other portions of the material, documents, items, or communications for
18 which protection is not warranted are not swept unjustifiably within the
19 ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited.
21 Designations that are shown to be clearly unjustified or that have been made
22 for an improper purpose (e.g., to unnecessarily encumber the case
23 development process or to impose unnecessary expenses and burdens on
24 other parties) may expose the Designating Party to sanctions.

25 If it comes to a Designating Party’s attention that information or items
26 that it designated for protection do not qualify for protection, that
27 Designating Party must promptly notify all other Parties that it is
28 withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise
2 provided in this Order (see, e.g., second paragraph of section 5.2(a) below),
3 or as otherwise stipulated or ordered, Disclosure or Discovery Material that
4 qualifies for protection under this Order must be clearly so designated before
5 the material is disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page
11 that contains protected material. If only a portion or portions of the material
12 on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the
14 margins).

15 A Party or Non-Party that makes original documents available for
16 inspection need not designate them for protection until after the inspecting
17 Party has indicated which documents it would like copied and produced.
18 During the inspection and before the designation, all of the material made
19 available for inspection shall be deemed “CONFIDENTIAL.” After the
20 inspecting Party has identified the documents it wants copied and produced,
21 the Producing Party must determine which documents, or portions thereof,
22 qualify for protection under this order. then, before producing the specified
23 documents, the Producing Party must affix the “CONFIDENTIAL legend”
24 to each page that contains Protected Material. If only a portion or portions of
25 the material on a page qualifies for protection, the Producing Party also must
26 clearly identify the protected portion(s) (e.g., by making appropriate
27 markings in the margins).

1 (b) for testimony given in depositions that the Designating Party
2 identify the Disclosure or Discovery Material on the record, before the close
3 of the deposition all protected testimony.

4 (c) for information produced in some form other than
5 documentary and for any other tangible items, that the Producing Party affix
6 in a prominent place on the exterior of the container or containers in which
7 the information is stored the legend "CONFIDENTIAL." If only a portion or
8 portions of the information warrants protection, the Producing Party, to the
9 extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an
11 inadvertent failure to designate qualified information or items does not,
12 standing alone, waive the Designating Party's right to secure protection
13 under this Order for such material. Upon timely correction of a designation,
14 the Receiving Party must make reasonable efforts to assure that the material
15 is treated in accordance with the provisions of this Order.

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18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court's
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party shall initiate the
23 dispute resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding
25 shall be on the Designating Party. Frivolous challenges, and those made for
26 an improper purpose (e.g., to harass or impose unnecessary expenses and
27 burdens on other parties) may expose the Challenging Party to sanctions.
28 Unless the Designating Party has waived or withdrawn the confidentiality

1 designation, all parties shall continue to afford the material in question the
2 level of protection to which it is entitled under the Producing Party's
3 designation until the Court rules on the challenge.
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6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 7.1 Basic Principles. A Receiving Party may use Protected Material
8 that is disclosed or produced by another Party or by a Non-Party in
9 connection with this Action only for prosecuting, defending, or attempting to
10 settle this Action. Such Protected Material may be disclosed only to the
11 categories of persons and under the conditions described in this Order. When
12 the Action has been terminated, a Receiving Party must comply with the
13 provisions of section 13 below (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving
15 Party at a location and in a secure manner that ensures that access is limited
16 to the persons authorized under this Order.

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
18 otherwise ordered by the court or permitted in writing by the Designating
19 Party, a Receiving Party may disclose any information or item designated
20 "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this
22 Action, as well as employees of said Outside Counsel of Record to whom it
23 is reasonably necessary to disclose the information for this Action;

24 (b) the officers, directors, and employees (including House
25 Counsel) of the Receiving Party to whom disclosure is reasonably necessary
26 for this Action;
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1 (c) Experts (as defined in this Order) of the Receiving Party to
2 whom disclosure is reasonably necessary for this Action and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and
7 Professional Vendors to whom disclosure is reasonably necessary for this
8 Action and who have signed the “Acknowledgment and Agreement to Be
9 Bound” (Exhibit A);

10 (g) the author or recipient of a document containing the
11 information or a custodian or other person who otherwise possessed or knew
12 the information;

13 (h) during their depositions, witnesses, and attorneys for
14 witnesses, in the Action to whom disclosure is reasonably necessary
15 provided: (1) the deposing party requests that the witness sign the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and (2) they
17 will not be permitted to keep any confidential information unless they sign
18 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
19 otherwise agreed by the Designating Party or ordered by the court. Pages of
20 transcribed deposition testimony or exhibits to depositions that reveal
21 Protected Material may be separately bound by the court reporter and may
22 not be disclosed to anyone except as permitted under this Stipulated
23 Protective Order; and

24 (i) any mediator or settlement officer, and their supporting
25 personnel, mutually agreed upon by any of the parties engaged in settlement
26 discussions.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other
4 litigation that compels disclosure of any information or items designated in
5 this Action as “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such
7 notification shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena
9 or order to issue in the other litigation that some or all of the material
10 covered by the subpoena or order is subject to this Protective Order. Such
11 notification shall include a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to
13 be pursued by the Designating Party whose Protected Material may be
14 affected. If the Designating Party timely seeks a protective order, the Party
15 served with the subpoena or court order shall not produce any information
16 designated in this action as “CONFIDENTIAL” before a determination by
17 the court from which the subpoena or order issued, unless the Party has
18 obtained the Designating Party’s permission. The Designating Party shall
19 bear the burden and expense of seeking protection in that court of its
20 confidential material and nothing in these provisions should be construed as
21 authorizing or encouraging a Receiving Party in this Action to disobey a
22 lawful directive from another court.

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25 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
26 PRODUCED IN THIS LITIGATION

27 (a) The terms of this Order are applicable to information produced
28 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such

1 information produced by Non-Parties in connection with this litigation is
2 protected by the remedies and relief provided by this Order. Nothing in these
3 provisions should be construed as prohibiting a Non-Party from seeking
4 additional protections.

5 (b) In the event that a Party is required, by a valid discovery
6 request, to produce a Non-Party's confidential information in its possession,
7 and the Party is subject to an agreement with the Non-Party not to produce
8 the Non-Party's confidential information, then the Party shall:

9 (1) promptly notify in writing the Requesting Party and the
10 Non-Party that some or all of the information requested is subject to a
11 confidentiality agreement with a Non-Party;

12 (2) promptly provide the Non-Party with a copy of the
13 Stipulated Protective Order in this Action, the relevant discovery request(s),
14 and a reasonably specific description of the information requested; and

15 (3) make the information requested available for inspection by
16 the Non-Party, if requested.

17 (c) If the Non-Party fails to seek a protective order from this
18 court within 14 days of receiving the notice and accompanying information,
19 the Receiving Party may produce the Non-Party's confidential information
20 responsive to the discovery request. If the Non-Party timely seeks a
21 protective order, the Receiving Party shall not produce any information in its
22 possession or control that is subject to the confidentiality agreement with the
23 Non-Party before a determination by the court. Absent a court order to the
24 contrary, the Non-Party shall bear the burden and expense of seeking
25 protection in this court of its Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has
3 disclosed Protected Material to any person or in any circumstance not
4 authorized under this Stipulated Protective Order, the Receiving Party must
5 immediately (a) notify in writing the Designating Party of the unauthorized
6 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
7 Protected Material, (c) inform the person or persons to whom unauthorized
8 disclosures were made of all the terms of this Order, and (d) request such
9 person or persons to execute the “Acknowledgment and Agreement to Be
10 Bound” that is attached hereto as Exhibit A.

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13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
14 OTHERWISE PROTECTED MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain
16 inadvertently produced material is subject to a claim of privilege or other
17 protection, the obligations of the Receiving Parties are those set forth in
18 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
19 to modify whatever procedure may be established in an e-discovery order
20 that provides for production without prior privilege review. Pursuant to
21 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
22 agreement on the effect of disclosure of a communication or information
23 covered by the attorney-client privilege or work product protection, the
24 parties may incorporate their agreement in the stipulated protective order
25 submitted to the court.

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right
3 of any person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of
5 this Protective Order no Party waives any right it otherwise would have to
6 object to disclosing or producing any information or item on any ground not
7 addressed in this Stipulated Protective Order. Similarly, no Party waives any
8 right to object on any ground to use in evidence of any of the material
9 covered by this Protective Order.

10 12.3 Filing Protected Material. A Party that seeks to file under seal
11 any Protected Material must comply with Civil Local Rule 79-5. Protected
12 Material may only be filed under seal pursuant to a court order authorizing
13 the sealing of the specific Protected Material at issue. If a Party's request to
14 file Protected Material under seal is denied by the court, then the Receiving
15 Party may file the information in the public record unless otherwise
16 instructed by the court.

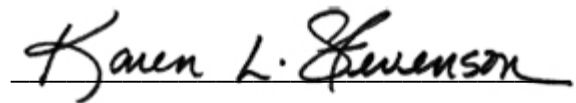
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19 13. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in paragraph 4,
21 within 60 days of a written request by the Designating Party, each Receiving
22 Party must return all Protected Material to the Producing Party or destroy
23 such material. As used in this subdivision, “all Protected Material” includes
24 all copies, abstracts, compilations, summaries, and any other format
25 reproducing or capturing any of the Protected Material. Whether the
26 Protected Material is returned or destroyed, the Receiving Party must submit
27 a written certification to the Producing Party (and, if not the same person or
28 entity, to the Designating Party) by the 60 day deadline that (1) identifies

1 (by category, where appropriate) all the Protected Material that was returned
2 or destroyed and (2)affirms that the Receiving Party has not retained any
3 copies, abstracts, compilations, summaries or any other format reproducing
4 or capturing any of the Protected Material. Notwithstanding this provision,
5 Counsel are entitled to retain an archival copy of all pleadings, motion
6 papers, trial, deposition, and hearing transcripts, legal memoranda,
7 correspondence, deposition and trial exhibits, expert reports, attorney work
8 product, and consultant and expert work product, even if such materials
9 contain Protected Material. Any such archival copies that contain or
10 constitute Protected Material remain subject to this Protective Order as set
11 forth in Section 4 (DURATION).

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14 14. Any violation of this Order may be punished by any and all
15 appropriate measures including, without limitation, contempt proceedings
16 and/or monetary sanctions.

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20 DATED: April 10, 2017



KAREN L. STEVENSON

UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name],
4 of _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California on _____ in the case of Gary Scherer v. City of Los
8 Angeles; Los Angeles World Airports; Pacific Coast Sightseeing Tours and
9 Charters, Inc., Case No.: 2:17-cv-01110-FMO (KS). I agree to comply with and to
10 be bound by all the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and
12 punishment in the nature of contempt. I solemnly promise that I will not disclose
13 in any manner any information or item that is subject to this Stipulated Protective
14 Order to any person or entity except in strict compliance with the provisions of
15 this Order.

16 I further agree to submit to the jurisdiction of the United States District
17 Court for the Central District of California for the purpose of enforcing the terms
18 of this Stipulated Protective Order, even if such enforcement proceedings occur
19 after termination of this action. I hereby appoint _____
20 [print or type full name] of _____ [print or type full
21 address and telephone number] as my California agent for service of process in
22 connection with this action or any proceedings related to enforcement of this
23 Stipulated Protective Order.

24
25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____